

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: 61 Park LLC dba Maplewood Estates Wastewater Facility No. 6-70-00-6-01	ADMINISTRATIVE CONSENT ORDER NO. 2012-WW-23
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TO: Tim McCleary, Member-Manager
61 Park LLC
3611 Grandview Avenue
Muscataine, Iowa 52761

I. SUMMARY

This administrative consent order (order) is entered into between Tim McCleary, member-manager of 61 Park LLC dba Maplewood Estates (Tim McCleary) and the Iowa Department of Natural Resources (Department). The order is issued due to NPDES permit effluent limit violations. The order assesses a penalty of \$3,000.00.

Any questions or response regarding this order should be directed to:

Relating to technical requirements:

Russell Royce, Environmental Specialist
IDNR Field Office No. 6
1023 W. Madison
Washington, Iowa 52353-1623
Ph: 319/653-2135

Relating to legal requirements:

Diana Hansen, Attorney at Law
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-6267

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

DESCRIPTION OF FACILITY AND NPDES PERMIT

1. Tim McCleary, is a member-manager of 61 Park LLC, which owns and operates Maplewood Estates. Maplewood Estates is a mobile home park located in Muscatine County near Muscatine, Iowa. This mobile home park was acquired by 61 Park LLC in 2006. Tim McCleary was an original member-manager of the LLC. Maplewood Estates is permitted as a two cell aerated lagoon system for the treatment of domestic wastewater. The lagoon system is considered to be a continuous discharge system. Despite its designation as an aerated lagoon system, this wastewater treatment facility (WWTF) does not have mechanical aeration.

2. Wastewater from this WWTF is discharged to Pine Creek. The NPDES permit (permit) for this WWTF has expired. Since the prior facility owner filed an application for renewal of the permit prior to expiration of the permit, the permit continues to be in effect until a new permit is issued. The permit contains effluent limitations for the discharge of pollutants, including but not limited to carbonaceous biochemical oxygen demand (CBOD5), total suspended solids (TSS), ammonia nitrogen (NH3-N) and pH.

FACILITY EFFLUENT QUALITY

3. For the period of July 2008 through July 2011, the WWTF serving Maplewood Estates had violations of the 30 day average concentration effluent limit for CBOD5 during the months of July, August, and December 2008; January, February and July 2009; February and August 2010; and January and February 2011. For the period of July 2008 through July 2011, the Maplewood Estates WWTF had violations of the 30 day average mass effluent limit for CBOD5 during the months of July, August, and December 2008; January, February, April, July, October, November, and December 2009; January through August 2010; and January, February and April 2011. There were violations of the 30 day average concentration effluent limit for NH3-N during January, February, and March 2008; May 2008; August 2008 through December 2008; January 2009 through April 2009; July through December 2009; January 2010 through March 2010; July through November 2010; and January through April 2011. Violations of the NH3-N 30 day average mass effluent limit were reported for January through March 2008; August through December 2008; January through March 2009; July 2009; September through December 2009; January through November 2010; and January through March 2011. This facility reported violations of the 30 day average mass effluent limit for TSS during January through July 2010 and April 2011. This facility exceeded its daily maximum flow for nine months in 2008, eleven months in 2009, nine months in 2010, and four months in 2011. Violations have continued through July 2012.

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**DEPARTMENT FIELD OFFICE NO. 6 (FO 6) INSPECTIONS OF WWTF AND
NOTICES OF VIOLATION ISSUED BY FO 6**

4. On May 4, 2011 FO 6 inspected this WWTF. As a result of the inspection, a Notice of Violation (NOV) letter was issued to Tim McCleary, one of the member-managers of 61 Park LLC, on May 18, 2011. The NOV was issued due to violations of the CBOD5, TSS and NH3-N effluent limitations in the facility's NPDES permit. The NOV letter and the inspection report noted that the monthly operation report (MOR) was not submitted timely for December 2010 and that dissolved oxygen was not being reported properly. The NOV letter informed Mr. McCleary that the facility was not properly maintained. The NOV letter stated that the berms of the lagoons did not have rip rap, that the inner berms needed to be mowed, and that there were trees within the berms that needed to be removed.

5. The inspection report for the May 4, 2011 inspection documented the condition of the lagoons, the drainage ditch initially receiving the effluent from the lagoon system, and the stream that ultimately receives the effluent. The inspection report stated that the small lagoon cell that receives the initial flow from the mobile home park appeared to be full of primary sludge. A picture from the inspection showed one lagoon cell with a significant green growth of algae. The facility owner was required by the report to remove the sludge from the lagoon and to properly dispose of it. The inspection report stated that the drainage ditch that the lagoon effluent drains into showed a green algae growth on the bottom of the ditch. The report noted that the green growth continued from the confluence of the ditch and the creek for many feet down the creek. This indicated to the environmental specialist who conducted the inspection that the permit effluent limit exceedances were having a negative impact on the receiving stream.

6. Tim McCleary was issued an NOV on March 23, 2010 based on an inspection on March 5, 2010. The NOV was issued due to violations of the effluent limitations in the NPDES permit issued for this WWTF. During the March 5, 2010 inspection of the Maplewood Estates WWTF, the Department reviewed the MORs for the WWTF for the months of September 2006 through December 2009 to determine compliance with effluent limitations. In its inspection report, the Department noted 6 violations of the 30 day average concentration effluent limit for CBOD5, 12 violations of the 30 day average mass effluent limit for CBOD5, 24 violations of the 30 day average concentration effluent limit for NH3-N, and 24 violations of the 30 day average mass effluent limit for NH3-N.

7. FO 6 issued an NOV to Tim McCleary on February 12, 2008 due to failure to submit MORs for the months of January, February and May 2007.

8. FO 6 conducted an inspection of the Maplewood Estates WWTF on September 7, 2006. FO 6 issued an NOV based on the inspection for violations of the effluent limitations of the NPDES permit issued for the Maplewood Estates WWTF. FO 6 sent

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NOVs to the prior facility owner based on inspections on May 17, 2004 and July 17, 2002. The NOVs were issued due to effluent limit violations.

**FACILITY HISTORY CONCERNING ENGINEERING SUBMITTALS TO
DEPARTMENT'S WASTEWATER CONSTRUCTION SECTION AND
DEPARTMENT RESPONSES**

9. By a letter dated April 29, 2005, FO 6 requested that the prior facility owner submit a new preliminary engineering report (PER) or plan of action for upgrading the WWTF. The letter noted that the engineer retained by the facility owner had submitted a PER to the Department's wastewater engineering section but that the Department rejected the design since the proposed upgrade would not adequately handle the influent flows to the WWTF. The letter required the facility owner to submit the new PER to the Department by June 1, 2005. The PER was required to evaluate the WWTF to determine the cause of effluent limit violations and the action that needed to be taken to eliminate effluent limit violations at the WWTF. The PER was required to include an implementation schedule for the construction project. Instead of submitting a new PER, the facility's engineer submitted an application for a construction permit on or about June 2, 2005. FO 6 conducted a site survey on June 10, 2005 and found that the site met separation distances under the Department's rules. No construction permit was issued for this project and the project was not constructed.

10. On November 28, 2006, FO 6 received a letter from Tim McCleary stating that he had purchased the mobile home park and was renaming it Maplewood Estates. Mr. McCleary's letter informed FO 6 that he had hired an engineer to continue with the WWTF project and that new plans and specifications would be submitted.

11. By a letter dated December 4, 2006, FO 6 acknowledged Mr. McCleary as the new owner and that he had hired an engineer for installing a new treatment system. The letter required Mr. McCleary to move forward on the project and to submit plans and specifications for the new treatment facility to the Department within thirty days.

12. A further PER or facility plan (FP) dated January 14, 2007 was submitted to the Department but has not been approved by the Department to date. According to the Department's Project Engineer at the time, the project was not acceptable since the PER submitted did not contain a geotechnical engineering evaluation or report. Due to this, the PER was not complete and not reviewable by the Department's Project Manager.

13. On February 2, 2009, the Department's engineering project manager received an amended facility plan, construction plans, schedules A, F, G, H1, K2 and DynamOx supporting documents/specifications for modifications to the Maplewood WWTF. According to the Department's current project manager, the engineering consultant for Maplewood was informed in a telephone conversation that the DynaMox system was not approvable. The DynaMox system, which was proposed to add oxygen to the existing

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primary and secondary lagoon cells was not approvable since the existing two cell system was not in conformance with design standards. On April 3, 2009, Jim Ridgeway, a Dynamox representative, requested a meeting to discuss the "Dynamox Process". On May 27, 2009, Jim Ridgeway met with wastewater engineers in a staff meeting and gave a presentation on the Dynamox System. The DynaMox representative was informed that a pilot study and information concerning use of the DynaMox system in neighboring states was needed for the Department to consider the system as a new treatment process. The DynaMox representative was also informed that in order for the DynaMox system to be used in a lagoon system, the existing lagoons needed to be in conformance with design standards.

The DynamOx system that was proposed was designed to add oxygen into the primary cell and into the second cell. This system is not approvable under the Department's current design standards as stated in the above paragraphs.

14. Tim McCleary is required by this order to pay an administrative penalty due to effluent limit violations at this facility through July 2012. In late August 2012, Tim Nelson became a member-manager of 61 Park LLC. Tim McCleary and Tim Nelson are required by a separate administrative order to have an engineer submit a new or revised PER/ FP to the Project Manager from the Department's Wastewater Engineering Section. Prior to the submittal of a new or revised PER/ FP, the engineer should submit a work request and design basis in accordance with the Department's wastewater treatment system facility plan submittal and review process. Below is the web link for the wastewater facility plan review process:

http://www.iowadnr.gov/Portals/idnr/uploads/water/wastewater/wwmanual/_full.pdf.

Review and approval of the design basis, treatment process and design loads, will proceed to the wasteload allocation determination and antidegradation rule requirement. Antidegradation alternative analysis, if required, has to be approved prior to the submittal of an approvable facility plan.

The new or revised PER/ FP is required to include a construction schedule for an approvable upgrade project meeting Department design standards. After approval of the new or revised PER/ FP by the Department's Project Manager, the facility owner needs to submit complete plans and specifications meeting Department design standards and rules with a complete construction permit application for the project to upgrade the WWTF and applicable fees to the Department's Project Manager. Once the PER/ FP and the plans and specifications are approved by the Department's Project Manager, a construction permit will be issued for construction of the project. The project to upgrade the Maplewood Estates WWTF is required to be constructed in accordance with the construction permit issued for the project and the construction schedule included in the separate administrative order.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.175(1) provides in part:

If there is substantial evidence that any person has violated or is violating any provision of this division or chapter 459, subchapter III, or of any rule established or permit issued pursuant thereto; then:

1. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease.

2. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state contrary to a permit from this Department. Iowa Code section 455B.183 prohibits the operation of a waste disposal system without a permit from this Department.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the construction and operation of WWTFs and the discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60- 69. Subrule 62.1(1) prohibits the discharge of a pollutant without an NPDES permit. Subrule 64.3(1) prohibits the operation of any waste disposal system without a permit. Rule 64.6 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules and monitoring and reporting requirements in chapter 63. The Maplewood Estates' WWTF discharges to a water of the state and is required to have an NPDES permit with effluent limitations, monitoring requirements and reporting requirements. There have been numerous violations of the permit effluent limitations for CBOD5, TSS and ammonia nitrogen.

4. Department rule 567 IAC 63.7 provides for the submission of records of operation for WWTFs to the Department: Under this rule MORs are required to be submitted to the Department within fifteen days following the close of the reporting period and in accordance with monitoring requirements derived from chapter 63 and included in the operation permit for the facility. Rule 63.9 requires MORs to include the results of all monitoring specified in or authorized by chapter 63. NOV letters issued as a result of inspections and review of monitoring data for this WWTF stated violations of the monitoring and reporting requirements for this facility. Violations are discussed in Section III. Statement of Facts, above in this order.

5. The NPDES permit for the Maplewood Estates WWTF requires that this WWTF be adequately operated and maintained. Standard condition 8 of the permit provides that all facilities and control systems shall be operated as efficiently as possible and maintained in good working order. This standard permit condition is based upon subrule 64.7(5)“f”. This subrule states “the permittee at all times shall maintain in good working order and

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operate as efficiently as possible any facilities and systems of control to achieve compliance with the terms and conditions of the permit.” Based on the inspection reports for this facility, there has not been proper operation and maintenance of this facility. The facility owner has not completed an upgrade to the WWTF as required by the Department. The inspection reports and MORs establish that this facility needs to complete an upgrade to the WWTF in order to come into compliance with permit effluent limits and the permit requirement for proper operation and maintenance. The facility upgrade will be required by a separate administrative order.

V. ORDER

THEREFORE, the Department orders and Tim McCleary agrees to comply with the following provisions to cease, abate and redress violations:

An administrative penalty of \$3,000.00 is assessed by this order due the violations listed in this order by 61 Park LLC dba Maplewood Estates. Tim McCleary agrees to pay the administrative penalty to the Department within 30 days of receipt of the order signed by both parties.

VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty. The administrative penalty assessed by this order is determined as follows:

a. **Economic Benefit** An upgrade to the Maplewood Estates WWTF as required by the Department has not been completed to date. Although submittals were made to the Department’s Wastewater Engineering Section, they were not adequate or complete enough for the Department’s Project manager to move forward in reviewing the project. Permit effluent violations have not been remediated in a timely manner to prevent significant non-compliance. Effective practices or measures have not been implemented to eliminate NPDES permit violations. This facility additionally has not been maintained adequately. There have been cost savings to 61 Park LLC due to not performing the maintenance and the upgrade to the WWTF. This order assesses the amount of \$1,000.00 for this factor based on not performing adequate maintenance and an upgrade to the WWTF.

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b. Gravity of the violations One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies.

Wastewater discharged from the Maplewood Estates WWTF exceeded, and continues to exceed, permit limitations on multiple occasions. This WWTF has been in chronic noncompliance with its NPDES permit for a number of years. Federal regulations adopted by EPA in 40 CFR 123.45 provide that chronic violations of monthly averages are those where the monthly average permit limits are exceeded any four months in a six month period. MOR data reports from the WWTF for the NPDES permit effluent limit parameters generated by the Department's NPDES database show that this WWTF meets this criterion. The wastewater discharged during the times of non-compliance has had a negative impact to the environment, specifically to Pine Creek, the receiving stream. The amount of \$1,000.00 is assessed for this factor, due to multiple violations.

c. Culpability The facility owner, 61 Park LLC, was on notice when the Maplewoods Estates mobile home park was purchased that the WWTF serving the mobile home park needed to be upgraded. Tim McCleary, a member-manager of 61 Park LLC, was informed through NOVs and inspection reports that the WWTF serving Maplewood Estates needed to be upgraded in order to achieve compliance with permit effluent limitations. The amount of \$1,000.00 is assessed for this factor, in view of multiple violations.

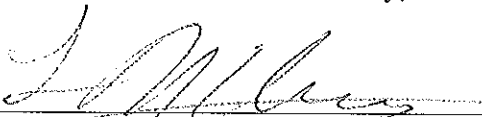
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC chapter 7, as adopted by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of Tim McCleary, member-manager of 61 Park LLC. By signature to this order, all rights to appeal this order are waived.

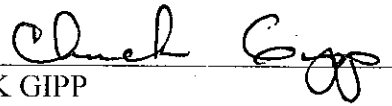
VIII. NONCOMPLIANCE

Compliance with Section V. of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Then Department reserves the right to issue an administrative order or to refer to the Attorney General's Office in lieu of collecting stipulated penalties pursuant to this order.

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TIM MCCLEARY, MEMBER-MANAGER
61 PARK LLC

Dated this 3 day of
October, 2012


CHUCK GIPP
DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18th day of
October, 2012

Tim McCleary, Member-Manager of 61 Park LLC dba Maplewood Estates- Facility No. 6-70-00-6-01 (Copy to Central Office Wastewater File), Russell Royce- Field Office No. 6, Suresh Kumar, P.E.- Wastewater Construction Engineering, Diana Hansen- Legal Services Bureau, US EPA Region VII, I.B.2.a and I.B.2.c.